Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 86-343

SUPREME COURT OF THE UNITED STATES

October Term, 1986

JERRY YOUNG, ET AL.

Petitioners

v.

SEABOARD SYSTEM RAILROAD COMPANY

Respondent

Supplemental Appendix to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Supplemental Appendix to

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NO. S82-0447(C)

JERRY YOUNG, INDIVIDUALLY, AND AS GUARDIAN OF PATTY YOUNG; PATRICK YOUNG, A MINOR, BY AND THROUGH HIS FATHER AND NEXT FRIEND, JERRY YOUNG AND ROBERT YOUNG — PLAINTIFFS

V.

SEABOARD SYSTEM RAILROAD COMPANY, A CORPORATION — DEFENDANT

The plaintiffs in this case brought this action for negligence against the railroad which the Court heard extensively and is now confronted with a series of customary motions.

The case was heard before a very intelligent jury resulting in a verdict for the defendant. The disposition of this case turns on a question of fact - not a question of law. The plaintiffs filed a motion for judgment notwithstanding the verdict, or for a new trial. Both motions are now denied.

The plaintiffs were extremely well

knowledgeable of this particular railroad crossing. The driver of the plaintiffs' car had travered this same crossing three times. She did not stop before undertaking to cross these railroad tracks although she was well aware of the danger in crossing a railroad track without stopping, without looking and without listening as is required of any motorist before crossing the tracks of any railroad. Mrs. Young and one son were the sole occupants of this yellow Plymouth car on the date of this accident. Mrs Young had a Christmas tree in the car at the time of this accident. The train was a double-header pulling approximately 89 cars. The railroad was ringing its bell and blowing its whistle as required by statute. The train was coming from the west out of New Orleans and going east toward Mobile at the time. The automobile was proceeding southerly toward Mississippi Sound. It almost completed the passage over the

railroad tracks but was hit by the lead locomotive almost midway and was dragged several hundred feet up the track.

Mrs. Young as the driver of this Plymouth car was painfully injured. Her son seated to her right was injured but it is, indeed, remarkable that she and her son were not both killed. The train hit the automobile on its right side. The train and the automobile were both making approximately 30 miles an hour when they came in contact with each other.

An intelligent and perfectly honorable and upright jury heard and observed in great detail the exact facts of this encounter before rendering its decision. Mrs. Young contended in this case, among other things, that her vision was obscured from the west, but the facts are than one could see down the Seaboard tracks for approximately a quarter of a mile.

The Supreme Court of the United States has for years recognized and noted that a motorist is charged with knowledge of the fact that he enters upon a very dangerous position when he undertakes to cross a railroad track. These instruments in furtherance of interstate commerce must continue to exercise this function in spite of incident danger to those who must cross the tracks as a known place of imminent danger. Mrs. Patty Young simply gave no heed, or concern for her safety, or wellbeing on this occasion. Mrs. Young not only did not stop, look or listen for these locomotives, but she simply ignored her statutory duty for her own safety and welfare.

Mr. Justice Holmes in Baltimore & Ohio Railroad Co. v. Goodman, 275 U.S. 66; 48 S.Ct. 24 said: "We do not go into further details as to Goodman's precise situation, beyond mentioning that it was daylight and

that he was familiar with the crossing, for it appears to us plain that nothing is suggested by the evidence to relieve Goodman from responsibility for his own death. When a man goes upon a railroad track he knows that he goes to a place where he will be killed if a train comes upon him before he is clear of the track. He knows that he must stop for the train not the train stop for him. In such circumstances it seems to us that if a driver cannot be sure otherwise whether a train is dangerously near he must stop and get out of his vehicle, although obviously he will not often be required to do more than stop and look. It seems to us that if he relies upon not hearing the train or any signal and takes no further precaution he does so at his own risk. If at the last moment Goodman found himself in an emergency it was his own fault that he did not reduce his speed earlier or come to a stop. It is true as said in Flannelly v.

Delaware & Hudson Co., 225 U.S. 597, 603, 32 S.Ct. 783, 56 L. Ed. 1221, 44 L. R. A. (N.S.) 154, that the question of due care very generally is left to the jury. But we are dealing with a standard of conduct, and when the standard is clear it should be laid down once for all by the Courts. See Southern Pacific Co. v. Berkshire, 254 U.S. 415, 417, 419, 41 S.Ct. 162, 65 L. Ed. 335. Judgment reversed."

All railroad crossings are dangerous and are places where you might be killed if you paid no attention to it as a place of imminent danger. Sympathy never plays any part in a tragic situation of this kind, but the rights of the parties must be adjudged on a fair and impartial basis in this case. A person who is not moved and shaken in his overwhelming sense of sympathy for persons who find themselves injured very badly under the facts and circumstances present here, lacks human compassion. Mrs.

Young was a very intelligent school teacher but this is not a case where the railroad was negligent, but is a case where this little lady was grossly negligent and that was the sole proximate cause of their injury.

This question of negligence was superseded on April 4, 1974 by Senate Bill 1922 which appears as § 77-9-249 of the Mississippi Code 1972 which appears as 1983 Accumulative Supplement which effectually made the question of liability of personal injury or property damage a jury question to be decided under paragraph 3 of § 77-9-249. The entire matter was thus left to the decision of the jury under this 1974 statute of the State of Mississippi. The Legislature vested the jury in this case with the power and authority to decide this question, and this jury properly decided for the railroad.

The plaintiff's motions are both

denied.

Sept. 24, 1984

/s/ Harold Cox

UNITED STATES DISTRICT JUDGE